

§ 655.0

102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Public Law 105-277, 112 Stat. 2681; and 8 CFR 214.2(h).

Subparts J and K authority repealed.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Public Law 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Public Law 109-423, 120 Stat. 2900; and 8 CFR 214.2(h).

SOURCE: 42 FR 45899, Sept. 13, 1977, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 655 appear at 71 FR 35521, 35522, June 21, 2006.

§ 655.0 Purpose and scope of subpart A.

This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant foreign workers in the United States (U.S.) in occupations other than agriculture or registered nursing.

[73 FR 77207, Dec. 18, 2008]

§ 655.00 Authority of the Office of Foreign Labor Certification (OFLC) Administrator under subparts A, B, and C.

Pursuant to the regulations under this part, temporary labor certification determinations under subparts A, B, and C of this part are ordinarily made by the Office of Foreign Labor Certification (OFLC) Administrator (OFLC Administrator) of the Employment and Training Administration. The OFLC Administrator will informally advise the employer or agent of the name of the official who will make determinations with respect to the application.

[71 FR 35518, June 21, 2006]

Subpart A—Labor Certification Process and Enforcement of Attestations for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers)

SOURCE: 73 FR 78052, Dec. 19, 2008, unless otherwise noted.

20 CFR Ch. V (4-1-09 Edition)

§ 655.1 Purpose and scope of subpart A.

(a) Before granting the petition of an employer to admit nonimmigrant workers on H-2B visas for temporary nonagricultural employment in the United States (U.S.), the Secretary of Homeland Security is required to consult with appropriate agencies regarding the availability of U.S. workers. Immigration and Nationality Act of 1952 (INA), as amended, secs. 101(a)(15)(H)(ii)(b) and 214(c)(1), 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184(c)(1).

(b) Regulations of the Department of Homeland Security (DHS) for the U.S. Citizenship and Immigration Services (USCIS) at 8 CFR 214.2(h)(6)(iv) require that, except for Guam, the petitioning H-2B employer attach to its petition a determination from the Secretary of Labor (Secretary) that:

(1) There are not sufficient U.S. workers available who are capable of performing the temporary services or labor at the time of filing of the petition for H-2B classification and at the place where the foreign worker is to perform the work; and

(2) The employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.

(c) This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant foreign workers in the U.S. in occupations other than agriculture and registered nursing.

(1) This subpart sets forth the procedures through which employers may apply for H-2B labor certifications, as well as the procedures by which such applications are considered and how they are granted or denied.

(2) This subpart sets forth the procedures governing the Department's investigatory, inspection, and law enforcement functions to assure compliance with the terms and conditions of employment under the H-2B program. The authority for such functions has been delegated by the Secretary of Homeland Security to the Secretary of Labor and re-delegated within the Department to the Employment Standards Administration (ESA) Wage and Hour Division (WHD). This subpart sets